IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2194 OF 2003

Shri Vijay Balbhim Pawar,)
Adult, Occ: At present Nil,)
residing at 123, South Sadar)
Bazar, in front of Shree Ram)
Temple, Solapur - 413 003.)..... Petitioner.

Versus

1) The Secretary, Home)
Department, Maharashtra)
State, Mumbai.)
2) The Director General of)
Police, Training & Sepcial)
Units, Maharashtra State)
Police Head Quarters, Shahid)
Bhagat Singh Marg, Colaba,)
Mumbai - 400 039.)
3) The District Superintendent)
of Police, Solapur District,)
Solapur. ...).... Respondents.

Mr. S.G.Kudle for the Petitioner.

Mr. P.P.Kakade, AGP for the Respondents.

CORAM : V.G. PALSHIKAR, and
V.R.KINGAONKAR, JJ.
DATED : 24TH APRIL, 2006.

JUDGMENT (Per V. R. Kingaonkar, J.):

By this petition, the order dated 29th August, 2002 passed in Original Application No. 298 of 2001 by the Maharashtra Administrative Tribunal is impugned by the Petitioner. He seeks writ of mandamus directing Respondents to consider his claim for the post of police constable.

2. Father of the Petitioner was a police constable and retired from service on 1st October, 1987. Being duly qualified, the Petitioner submitted his application. In the course of recruitment of constables in 1992, alongwith certificate regarding his participation in National Karate Championship event held at Kareem Nagar, Andhra Pradesh. He was found suitable in written test and was called for interview. He secured only 16 marks and as such was

not considered eligible for the appointment.

3. According to the Petitioner, he was deliberately allotted one mark less than the passing marks (17 out of 50). In fact he has acquired gold medal in Judo-Karate and as such was entitled to get grace marks. He should have been declared as passed in the test but the Respondent No.3 did not give him any grace marks and deliberately pushed him out of zone for consideration. He made representation to various authorities and ventilated his claim for being appointed as police constable. His request for such appointment came to be rejected. He filed Original Application No. 298 of 2001 before the Maharashtra Administrative Tribunal and sought necessary directions to the Respondents to consider his claim for the post of police constable. The Tribunal dismissed his application and as such he has filed the present writ petition.

4. According to the Respondents, the Petitioner could not secure passing marks i.e. 17 marks out of 50 marks in the oral interview and hence was rightly declared as failed candidate. It is averred that the Petitioner was not entitled to any grace marks. It is

further contended that the impugned order is legal, proper and correct. Consequently, the Respondents sought dismissal of the present petition.

5. We have considered rival submissions of the learned Counsel for the parties. There is no specific denial to the fact that the Petitioner is judo-karate champion. He participated in the National Championship of First National Karate Championship event held at Kareem Nagar, Andhra Pradesh on 9th and 10th December, 1988.

6. Though, the Petitioner contended before the Tribunal and in the petition that cases of other two candidates, namely, Suresh Kulkarni and Faiyaz Bhagwan were considered by the Respondents after relaxation of criteria about physical fitness and he was not treated similarly, which amounts to discrimination, yet such a ground was not pressed into service at the time of hearing. It is not necessary, therefore, to examine whether other candidates were considered by relaxation of condition and the case of the Petitioner was singled out.

7. Crucial question is as to whether the Petitioner

was legally entitled to grace / additional marks on account of his participation in national event of sports i.e. Judo-Karate and hence ought to have been declared as a successful candidate in the relevant test.

8. The Tribunal rejected application of the Petitioner on the ground that it is barred by limitation and secondly, giving or refusing to grant grace marks is entirely at the discretion of the Respondents. So far as question of limitation is concerned, the Tribunal failed to consider that from time to time the Petitioner moved the Government to consider his case. His various representations were rejected. The Petitioner’s father was informed that the Petitioner was declared as failed for the reason that he had secured only 16 marks. True, the letter was issued on 11th October, 1993 by the Deputy Inspector General of Police. The Petitioner made representation to the higher authority and pointed out the fact that he is a sportsman and has acquired black-belt in the national event of Judo-Karate sports. The delay by itself could not have been as a sufficient ground to deny claim of the Petitioner if the same is just and is founded on certain legal

basis. The Tribunal held that the first representation made by the Petitioner was dated 21st July, 1998 and then period of limitation had come to an end. The Tribunal did not explain as to why the explanation regarding the delay is unacceptable. We cannot be oblivious of the fact that many times the tendency is to seek redress through representations and not to approach the Court / Tribunal unless there is compulsion.

9. The Petitioner has strongly relied upon a Circular issued by the Inspector General of Police on 1st September, 1989. There cannot be duality of the opinion that the said Circular is applicable to the case of the Petitioner in as much as the Petitioner was called for the interview in 1992. The relevant circular (Exh.P at page 56) reveals that at the time of vivavoce test the candidate shall be given extra marks for special proficiency in the sports. The relevant portion of the circular shows that the marks are also specified viz. if a sportsman has participated on State level then 30 marks and if he has participated in national event then 40 marks are required to be allotted. Therefore, allotment of such marks is not within discretion of the Selection

Committee. The additional marks are required to be given as per the instructions in the said circular dated 1st September, 1989. This aspect is completely lost sight of by the Respondents. The Tribunal also did not consider this aspect. The Petitioner is entitled to obtain such additional marks in as much as he is a sportsman and has shown special proficiency in judo-karate, since he has acquired black-belt.

10. True, the Petitioner will have to be absorbed in the constabulary after long duration. However, he was not at fault. The Selection Committee did not give additional marks to him for the special proficiency in the sports. The Committee did not assign any reason for denial of such extra marks and non-observance of the Departmental Circular dated 1st September, 1989. The Petitioner is entitled, therefore, for absorption as a police constable notwithstanding the fact that he might have become over-aged. The petition will have to be, therefore, allowed on the short ground that the relevant circular is overlooked and the extra marks were not assigned in favour of the Petitioner though the Departmental Circular provides for the same.

11. In the result, the Petition is allowed and the

impugned order of the Tribunal is set aside. The Respondents are directed to consider claim of the Petitioner for appointment as police constable within a reasonable period, as far as possible within six months, if he is otherwise found eligible, by making addition of the extra marks in the marks secured by him at the vivavoce test as per the Departmental Circular dated 1st September, 1989. Rule made absolute in terms aforesaid. There shall be no order as to costs.

Sd/-

(V. G. PALSHIKAR, J.)

Sd/-

(V. R. KINGAONKAR, J.)